NO. 495

In the Supreme Court of the United States

OCTOBER TERM, 1948

FEDERAL COMMUNICATIONS COMMISSION, *Petitioner*

v.

WJR, THE GOODWILL STATION, INC., AND COASTAL PLAINS BROADCASTING CO., INC., *Intervenor-Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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The Solicitor General, on behalf of the Federal Communications Commission, prays that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the District of Columbia Circuit, entered in the above-entitled cause on October 7, 1948, reversing an order of the Commission which denied the respondent's petition for reconsideration of the grant of the application of Coastal Plains Broadcasting Company for a construction permit to erect a new radio station.

OPINIONS BELOW

The decision and order of the Federal Communications Commission have not yet been reported (R. 35-37). The opinions of the United States Court of Appeals for the District of Columbia Circuit have not yet been reported (R. 48-77).

JURISDICTION

The judgment of the Court of Appeals was entered on October 7, 1948 (R. 77-78). The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTION PRESENTED

Whether the Due Process Clause of the Fifth Amendment requires the Federal Communications Commission to hear oral argument before it can refuse a request for Commission action when the moving pleading neither states facts nor raises any substantial question of law, which, when viewed in the most favorable light, would make Commission action appropriate.

STATUTE INVOLVED

The pertinent provisions of the Communications Act of 1934, 48 Stat. 1064, as amended, 47 U. S. C. 151, *et seq.* (hereinafter referred to as the "Communications Act") are printed in the Appendix, *infra*, pp. 15-20.

STATEMENT

On May 28, 1946, Coastal Plains Broadcasting Company, Inc. (formerly Tarboro Broadcasting

Company, Inc.) filed an application for a construction permit for a new standard broadcast station (WCPS) to be located in Tarboro, North Carolina, and to operate on the frequency 760 kilocycles with 1 kilowatt power during the daytime hours only (R. 19-20). This application was consistent with Section 3.22 and 3.25(a) of the Commission's Rules and Regulations (4 F. R. 2715-2716; 5 F. R. 3670; 6 F. R. 2544) (see Appendix, *infra*, pp. 24, 25) authorizing the licensing of Class II stations operating daytime only on Class I or clear channels, among them the frequency 760 kilocycles. The Commission, upon examination of the application of Coastal Plains, on August 22, 1946, granted that application without hearing in accordance with Section 309(a) of the Communications Act and Section 1.382 (formerly Section 1.381) of the Commission's Rules (R. 20). 11 F. R. 891, 177A-416, 13 F. R. 660, see Appendix *infra*, pp. 17-18, 20-21.

On September 10, 1946, WJR, The Goodwill Station, Inc., licensee of radio station WJR which operates with studios in Detroit, Michigan (R. 33) on 760 kilocycles with 50 kilowatt power, unlimited time, as a Class I-A Clear Channel station, filed a petition for reconsideration and hearing of the grant to Coastal Plains. The petition requested that the Coastal Plains grant be set aside and designated for a hearing in which WJR could participate. This petition was based on the allegation that "objectionable interference" to the service of WJR would be caused by the operation of the new

porting affidavit were equally explicit that the interference from Coastal Plains would occur in areas where the signal strength averaged 32 uv/m, the area of interference was well outside the 100 uv/m contour. Under these circumstances, no question and at the very least no substantial question, was presented by the claim of WJR that its license would be modified as a result of the Coastal Plains grant, so that it would be entitled to the hearing prescribed by Section 312(b) of the Communications Act. It is submitted, therefore, that the Constitution did not require that WJR's petition be designated for oral hearing on "threshold" questions of law.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

PHILIP B. PERLMAN,
Solicitor General.

BENEDICT P. COTTONE,
General Counsel,
Federal Communications Commission.

January 1949.

APPENDIX

COMMUNICATIONS ACT OF 1934, 48 STAT. 1064, AS AMENDED, 47 U. S. C. 151, ET SEQ.

Title III—Special Provisions Relating to Radio.

License for Radio Communication or Transmission of Energy.

SEC. 301. It is the purpose of this Act, among other things, to maintain the control of the United States over all the channels of interstate and foreign radio transmission; and to provide for the use of such channels, but not the ownership thereof, by persons for limited periods of time, under licenses granted by Federal authority, and no such license shall be construed to create any right, beyond the terms, conditions, and periods of the license. No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio (a) from one place in any Territory or possession of the United States or in the District of Columbia to another place in the same Territory, possession, or District; or (b) from any State, Territory, or possession of the United States, or from the District of Columbia to any other State, Territory, or possession of the United States; or (c) from any place in any State, Territory, or possession of the United States, or in the District of Columbia, to any place in any foreign country or to any vessel; or (d) within any State when the effects of such use extend beyond the borders of said State, or when interference is

modification of a station license the Commission shall determine that public interest, convenience, or necessity would be served by the granting thereof, it shall authorize the issuance, renewal, or modification thereof in accordance with said finding. In the event the Commission upon examination of any such application does not reach such decision with respect thereto, it shall notify the applicant thereof, shall fix and give notice of a time and place for hearing thereon, and shall afford such applicant an opportunity to be heard under such rules and regulations as it may prescribe.

(b) Such station licenses as the Commission may grant shall be in such general form as it may prescribe, but each license shall contain, in addition to other provisions, a statement of the following conditions to which such license shall be subject:

(1) The station license shall not vest in the licensee any right to operate the station nor any right in the use of the frequencies designated in the license beyond the term thereof nor in any other manner than authorized therein.

(2) Neither the license nor the right granted thereunder shall be assigned or otherwise transferred in violation of this Act.

(3) Every license issued under this Act shall be subject in terms to the right of use or control conferred by section 606 hereof.

Revocation of Licenses.

Sec. 312. (b) Any station license hereafter granted under the provisions of this Act or the construction permit required hereby and hereafter issued, may be modified by the Commission either for a limited time or for the duration of the term thereof, if in the judgment of the Commission such action will promote the public interest, convenience, and necessity, or the provisions of this Act or of any treaty ratified by the United States will be more fully complied with: *Provided, however,* That no such order of modification shall become final until the holder of such outstanding license or permit shall have been notified in writing of the proposed action and the grounds or reasons therefor and shall have been given reasonable opportunity to show cause why such an order of modification should not issue.

Proceedings to Enforce or Set Aside the Commission's Orders—Appeal in Certain Cases.

Sec. 402. (b) An appeal may be taken, in the manner hereinafter provided, from decisions of the Commission to the United States Court of Appeals for the District of Columbia in any of the following cases:

(1) By any applicant for a construction permit for a radio station, or for a radio station license, or for renewal of an existing radio station license, or for modification of an existing radio station license, whose application is refused by the Commission.

station. (R. 20-22.) An engineering affidavit filed in support of the petition stated that the service of WJR would be interfered with during certain daytime hours in an area in which the field intensity of WJR's signal averages 32 microvolts per meter or less during daytime hours. (R. 22-25.)[1] Cf. Section 1.390(c), formerly 1.387(c), of the Commission's Rules and Regulations, 11 F. R. 891, 177A-417, see Appendix, *infra*, p. 22. On October 18, 1946, Coastal Plains filed an opposition to the petition for reconsideration (R. 26-29). By decision and order, dated December 17, 1946, the Commission denied the petition for reconsideration on the grounds that the interference which petitioner alleged would be caused to the service of WJR was not within a service area entitled to protection under the Commission's Rules and Regulations (R. 35-37). The Decision of the Commission stated:

> Station WJR is a Class I-A station. Under the Commission Rules and Standards, Class I-A stations are normally protected daytime to the 100 microvolt-per-meter contour. The area sought by petitioner to be protected is, according to the engineering affidavit accom-

[1] Although the affidavit alleges that, during the winter season, the interference would occur at contours greater than 32 microvolts per meter, no allegation was made that this interference would occur at any time to service within the 100 microvolt per meter contour and the case was considered both by the Commission and the court below, without objection by the respondent, as one involving interference to service outside the 100 microvolt per meter contour.

panying the petition, served by Station WJR during the daytime with a signal intensity of 32 microvolts-per-meter or less and is therefore outside the normally protected contour.

On January 7, 1947, appellant filed an appeal in the United States Court of Appeals for the District of Columbia Circuit from the decision of the Commission denying its petition for reconsideration of the grant to Coastal Plains (R. 1-8). On January 13, 1947, Coastal Plains filed a notice of intention to intervene in the appeal. The case was originally argued on March 13, 1947, before Chief Justice Groner and Justices Clark and Prettyman. It was reargued on June 11, and 12, 1947, by direction of the Court before Justices Stephens, Edgerton, Clark, Wilbur K. Miller and Prettyman.[2] On October 7, 1948, the Court reversed the order of the Commission, Justice Stephens delivering the opinion of the court in which Justices Clark and Miller concurred (R. 48-69). Justice Prettyman wrote a dissenting opinion in which Justice Edgerton concurred (R. 69-77).

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[2] The order of the court, dated May 22, and 27, 1947, requested reargument on all points. In addition it stated: "The court in particular requests, however, the presentation of argument and authorities in respect of the effect of the Communications Act, the rules and regulations of the Commission, and the due process clause of the Fifth Amendment upon the claimed right of hearing before the Commission upon the question whether the grant of the new application will operate as a modification of the existing license." (R. 47).

In reversing the decision of the Commission, the court below held that before the Commission could dispose of respondent's petition, it was required to afford respondent a hearing, including oral argument, on the "threshold" question of law, namely whether the interference respondent alleged it would suffer was "objectionable interference" against which it was protected under the Communications Act or the Rules and Regulations of the Commission. The opinion of the court below makes clear that if this question is answered in the negative, respondent's petition was without merit. The court holds, however, that the Commission could not decide this question of law without first affording respondent an oral hearing.

Justices Prettyman and Edgerton, dissenting, were of the opinion that respondent was not entitled to an oral hearing on this question of law (R. 69-77). Justice Prettyman pointed out that there was in this case no question whatsoever as to the degree of protection afforded Class I-A stations such as WJR (R. 71-73). He concluded (R. 72-73) that "the facts alleged in the petitions for intervention and hearing, as presented to the Commission, taken as fully true, do not show any threatened interference in the only area in which WJR is protected." It was the view of the minority that (R. 73):

> . . . a person has not established his right to a hearing under the Fifth Amendment, under

the Communications Act, or under the Commission's Rules and Regulations, until he has alleged some fact which indicates a threatened damage to, or modification of, some existing right of his; or facts which at least present a substantial question in that regard. If a person has a right of protection within a 100 uv/m contour, and he alleges that a contemplated new operation will interfere with him at his 32 uv/m contour, he has not alleged that he would be deprived of property by the new operation, or that his license would be modified by it. He has not alleged, factually, that he is entitled to be heard upon the newcomer's application.

REASONS FOR GRANTING THE WRIT

1. The effect of the decision below is to create a rigorous and universally applicable requirement that the Federal Communications Commission and other administrative agencies afford each and every petitioner before them oral argument on questions of law raised by their petitions, even though the pleadings neither state facts nor raise any substantial questions of law, which, even when viewed in the most favorable light, would make favorable action on the petition appropriate. Thus the court below expressly holds (R. 54) that

> due process of law, as guaranteed by the Fifth Amendment, requires a hearing, including an opportunity to make oral argument, on every question of law raised before a judicial or quasi-judicial tribunal, including questions

> raised by demurrer or as if on demurrer, except such questions of law as may be involved in interlocutory orders such as orders for the stay of proceedings *pendente lite*, for temporary injunctions and the like.

And it expressly rejects the view of the minority below that before a right to oral argument may be established, it must be determined that a substantial question exists as to whether the allegations are legally sufficient to warrant favorable action by the tribunal (R. 53-54). The court below holds that oral argument is required regardless of whether the pleadings present such a substantial question of law. A question of importance to other administrative agencies as well as to the Federal Communications Commission and the courts is thus presented by the decision below, since it would substantially limit the manner in which administrative agencies and courts may carry on their functions without conflict with the Due Process Clause of the Fifth Amendment.

The widespread effect of the decision below is made clear by Justice Prettyman in his dissent (R. 76):

> The decision of the court that the Constitution requires an oral hearing on all petitions for intervention would cause extensive revision of the rules of administrative agencies. I have examined many of those rules and find no indication of any thought that such petitions must necessarily be set for oral hearing. The

fact that they make no such provision is, of course, unimportant if they are constitutionally inaccurate in that respect. But it is an interesting circumstance that the requirement is not generally, if at all, recognized. All those rules will have to be revised under the opinion and decision of the court in the present case.

The decision of the court below is so broad and unqualified that it would affect the procedural practices not only of administrative but of judicial tribunals as well. Thus it would unequivocally and in all events require an oral hearing before any court acted upon a demurrer or its modern equivalent, a motion to dismiss. The court below expressly recognized that this was the scope and extent of its ruling (R. 54). But as Justice Prettyman points out (R. 75), Rule 78 of the Federal Rules of Civil Procedure, which provides that a district court may make provision by rule or order for the submission of motions without oral argument upon brief, written statements, or reasons in support and opposition, would be invalid, in the light of the decision of the court below, insofar as that rule may be applied to motions to dismiss complaints.

To afford administrative agencies and courts no leeway or discretion whatever to make summary disposition of pleadings that are insubstantial or frivolous would impose a serious burden on the administration of judicial and quasi-judicial agencies. The large volume of business processed by these tribunals requires that certain pleadings

be handled without the formality of oral argument. In view of the broad scope of the decision below, it is of special importance that the errors of the court below with respect to the necessity for preliminary hearings and oral argument be corrected.

2. This court and others have stated that oral argument is not an essential ingredient of due process.[2] But the practice of the courts speaks even more loudly than their words. See *supra*, p. 9. For example, in *United States* v. *California*, No. 12, Original, the Commonwealth of Massachusetts, Robert E. Lee Jordan, and various California Indians were all denied leave to intervene without oral argument. 327 U. S. 764; 329 U. S. 689; 332 U. S. 804, 805; 334 U. S. 825. These unquestioned actions of this Court have particular significance here for, as was made clear below (R. 69), leave to intervene was, in essence, what the respondent was asking of the Commission. They constitute, therefore, striking evidence of the extent to which the court below has departed from

[2] *Morgan* v. *United States*, 298 U. S. 468, 481; *Peoria Braumeister Co.* v. *Yellowley*, 123 F. 2d 637 (C.A. 7); *Woodmen of the World Life Ins. Association* (*Station* WOW) v. *Federal Radio Commission*, 65 F. 2d 484 (C. A. D. C.); *Sproul* v. *Federal Radio Commission*, 54 F. 2d 444 (C. A. D. C.); *Foundation Company of Washington* v. *Federal Communications Commission* (C. A. D. C.), No. 9411, decided February 25, 1947 (appeal from denial without oral argument of petition for rehearing of grant of application to third person dismissed); *State ex rel. School Dist. 8* v. *Cary*, 166 Wis. 193.

accepted practice unwarrantedly to impose a requirement of oral argument.

3. There is no claim made here that the respondent did not have full access to the processes of the Commission, that it was not afforded a full opportunity to present its contentions in writing to the Commission, or that the Commission did not give adequate consideration to these contentions. Cf. *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 224-229. The Commission disposed of the petition in an opinion responsive to respondent's contentions and explicitly describing the basis for its action. Bearing in mind that the respondent enjoyed an opportunity to secure a judicial adjudication of the correctness of the Commission's decision, a decision with which the court below did not quarrel on the merits, there can be no basis for the view that the respondent has been deprived of a substantial right. There being nothing in the Constitution which prescribes the particular methods by which a person shall be permitted to persuade judicial and quasi-judicial tribunals of the validity of claims they make with respect to pure questions of law that may be involved in proceedings before such tribunals, the decision of the court below is entirely baseless. "The Fifth Amendment guarantees no particular form of procedure; it protects substantial rights." *National Labor Relations Board* v. *Mackay Radio and Telegraph Co.*, 304 U. S. 333, 351.

Since the decision below broadly requires oral argument whether or not a substantial question of law is raised, it is of little consequence, at this juncture, whether the respondent raised any such question. This is particularly true since the court below refused to pass upon the correctness of the Commission's determination that, on the basis of the allegations in respondent's petition, the respondent was not entitled to a hearing under Section 312(b) of the Communication Act (R. 65-66). But to the extent that the substantiality of the respondent's contentions is material, we think it demonstrable that no substantial question was raised.

The law applicable to respondent's petition is well settled. The decision of this Court in *Federal Communications Commission* v. *National Broadcasting Company, Inc.* (*KOA*), 319 U. S. 239, makes clear that the rights of a licensee are defined by the Rules and Standards of the Commission which are in substance incorporated in the license.[3]

[3] The court below held that the Due Process Clause was pertinent in the instant case because the impairment of a broadcasting station license by the grant of conflicting facilities to another station is *pro tanto* a deprivation of property. In so doing, it assumed, without regard to the nature and extent of the rights conferred by a radio station license in the light of the applicable provisions of the Communications Act and the Commission's Rules and Standards, that the grant of such a license confers on the licensee rights of "property" (R. 56-57). This assumption is, however, contrary to the express provisions of Sections 301, 304, 307(d) and 309(b) of the Communications Act. Moreover, such an assumption was unnecessary to

The Standards of Good Engineering Practice Concerning Standard Broadcast Stations make it indisputedly clear that WJR was not entitled to protection against the interference which it alleged would be caused to its ground wave signal in the daytime by reason of the operation of the Coastal Plains station in Tarboro. 4 F. R. 2862, 2865, see Appendix, *infra*, pp. 25-27. Section 3.25(a) of the Commission's Rules explicitly states that additional stations operating during daytime hours only may be assigned to operate on the channel on which WJR is licensed to operate as a Class I-A station. As Justice Prettyman pointed out in his dissent (R. 71), the rights of WJR in daytime "are defined with precision. . . . during daytime the Class I station is protected to the 100 uv/m ground wave contour." Since WJR's petition and sup-

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the decision in the case of *L. B. Wilson* v. *Federal Communications Commission* (C. A. D. C.), decided April 12, 1948, upon which the Court below relies. In the *Wilson* case, *supra*, as well as the companion case of *WJR* v. *Federal Communications Commission* (*Southeastern Broadcasting Co., Intervenor*), (C. A. D. C.), decided October 7, 1948, which were reargued together with the instant case in the Court below on June 11, and 12, 1947, the interference to the existing licensees, which it was alleged would result from the new grants, was within the normally protected contours of the existing stations as defined by the Commission's Rules and Standards. And therefore on the basis of the factual allegations of "objectionable interference" within protected contours, the licensees were entitled to a hearing under the ruling of this Court in *Federal Communications Commission* v. *National Broadcasting Company* (*KOA*), 319 U. S. 239.

caused by such use or operation with the transmission of such energy, communications, or signals from within said State to any place beyond its borders, or from any place beyond its borders to any place within said State, or with the transmission or reception of such energy, communications, or signals from and/or to places beyond the borders of said State; or (e) upon any vessel or aircraft of the United States; or (f) upon any other mobile stations within the jurisdiction of the United States; except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act.

General Powers of Commission.

Sec. 303. Except as otherwise provided in this Act, the Commission from time to time, as public convenience, interest, or necessity requires, shall—

* * * * *

(f) Make such regulations not inconsistent with law as it may deem necessary to prevent interference between stations and to carry out the provisions of this Act: *Provided, however,* That changes in the frequencies, authorized power, or in the times of operation of any station, shall not be made without the consent of the station licensee unless, after a public hearing, the Commission shall determine that such changes will promote public convenience or interest or will serve public necessity, or the provisions of this Act will be more fully complied with.

Waiver by Licensee.

Sec. 304. No station license shall be granted by the Commission until the applicant therefor shall have signed a waiver of any claim to the use of any particular frequency or of the ether as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise.

Allocation of Facilities; Term of Licenses.

Sec. 307. (d) No license granted for the operation of a broadcasting station shall be for a longer term than three years and no license so granted for any other class of station shall be for a longer term than five years, and any license granted may be revoked as hereinafter provided. Upon the expiration of any license, upon application therefor, a renewal of such license may be granted from time to time for a term of not to exceed three years in the case of broadcasting licenses and not to exceed five years in the case of other licenses, but action of the Commission with reference to the granting of such application for the renewal of a license shall be limited to and governed by the same considerations and practice which affect the granting of original applications.

Hearings on Applications for Licenses; Form of Licenses; Conditions Attached to Licenses.

Sec. 309. (a) If upon examination of any application for a station license or for the renewal or

(2) By any other person aggrieved or whose interests are adversely affected by any decision of the Commission granting or refusing any such application.

(3) By any radio operator whose license has been suspended by the Commission.

RULES AND REGULATIONS OF THE FEDERAL COMMUNICATIONS COMMISSION.

Sec. 1.382. Grants without a hearing.—(a) Where an application for radio facilities is proper upon its face and where it appears from an examination of the application and supporting data that (a) the applicant is legally, technically and financially qualified; (b) a grant of the application would not involve modification, revocation, or nonrenewal of any existing license or outstanding construction permit; (c) a grant of the application would not cause electrical interference to an existing station or station for which a construction permit is outstanding within its normally protected contour as prescribed by the applicable Rules and Regulations; (d) a grant of the application would not preclude the grant of any mutually exclusive application; and (e) a grant of the application would be in the public interest, the Commission will grant the application without a hearing.

(b) In making its determinations pursuant to the provisions of paragraph (a) of this section, the

Commission will not consider any other application as being mutually exclusive with the application under consideration unless such other application was substantially complete and was tendered for filing with the Commission not later than the close of business on the day preceding the day on which the Commission takes action with respect to the application under consideration.

Sec. 1.390. Petitions for reconsideration or for rehearing.—(a) Where an application has been granted without a hearing, any person aggrieved or whose interests would be adversely affected thereby may file a petition for reconsideration of such action. Such petition must be filed with the Commission within 20 days after public notice is given of the Commission's action in granting the application. Such petition will be granted if the petitioner shows that:

(1) Petitioner is an existing licensee or permittee and a grant of the application would require the modification, revocation, or non-renewal of his license or construction permit; or

(2) That petitioner is an existing licensee or permittee and a grant of the application would cause interference to his station within the normally protected contour as prescribed by applicable Rules and Regulations; or

(3) At the time the application was granted, petitioner had a mutually exclusive application pending before the Commission; or

(4) A grant of the application is not in the public interest.

(b) Where an application has been granted or denied after hearing, petitions for rehearing may be filed within 20 days after public notice is given of the Commission's action in granting or denying the application. Petitions for rehearing by persons not parties to the Commission's hearing will not be granted unless good cause is shown as to why it was not possible for such person to participate earlier in the Commission's proceeding.

(c) Where a petition for reconsideration or for rehearing is based upon a claim of electrical interference within the normally protected contour of an existing station or a station for which a construction permit is outstanding, such petition must be accompanied by an affidavit of a qualified radio engineer which shall show either by reference to the Commission's Standards of Good Engineering Practice or to actual measurements made in accordance with the methods prescribed by the Commission's Standards of Good Engineering Practice that electrical interference will be caused to the station within its normally protected contour. If the claim of interference is not based upon actual measurements made in accordance with the Standards of Good Engineering Practice, it may be controverted by affidavit containing results of actual measurements made in accordance with the Standards of Good Engineering Practice.

(d) Any opposition to a petition for reconsideration or rehearing may be filed within 10 days after the filing of such petition.

(e) Petitions for reconsideration or rehearing filed under this section may request (1) reconsideration, either in cases decided after hearing or in the cases of applications granted without hearing; (2) reargument; (3) reopening of the proceeding; (4) amendment of any finding; or (5) such other relief as may be appropriate. Such petition shall state specifically the form of relief sought and, subject to this requirement, may contain alternative requests. Each such petition shall state with particularity in what respect the decision, order or requirement or any matter determined therein is claimed to be unjust, unwarranted, or erroneous, and with respect to any finding of fact must specify the pages of record relied on. Where the petition is based upon a claim of newly discovered evidence, it must be accompanied by a verified statement of the facts relied upon, together with the facts relied on to show that the petitioner, with due diligence, could not have known or discovered such facts at the time of the hearing.

(f) The filing of a petition for reconsideration or rehearing shall not excuse any person from complying with or obeying any decision, order, or requirement of the Commission, or operate in any manner to stay or postpone the enforcement thereof. However, upon good cause shown the Commis-

sion may stay the effectiveness of its order or requirement pending a decision on the petition for rehearing. [11 F. R. 891, 177A-416-417, 13 F. R. 660].

* * * *

Sec. 3.22. Classes and power of standard broadcast stations.—(a) Class I station.—A "Class I Station" is a dominant station operating on a clear channel and designed to render primary and secondary service over an extended area and at relatively long distances. Its primary service area is free from objectionable interference from other stations on the same and adjacent channels, and its secondary service area free from interference, except from stations on the adjacent channel, and from stations on the same channel in accordance with the channel designation in section 3.25 or in accordance with the "Engineering Standards of Allocation." The operating power shall be not less than 10 kw nor more than 50 kw (also see section 3.25 (a) for further power limitation).

(b) Class II station. A "Class II Station" is a secondary station which operates on a clear channel (see section 3.25) and is designed to render service over a primary service area which is limited by and subject to such interference as may be received from Class I stations. A station of this class shall operate with power not less than 0.25 kilowatts nor more than 50 kilowatts. Whenever necessary a Class II station shall use a directional antenna or other

means to avoid interference with Class I stations and with other Class II stations, in accordance with the "Engineering Standards of Allocation."

Sec. 3.25 Clear Channels; Class I and II stations.—The frequencies in the following tabulation are designated as clear channels and assigned for use by the classes of stations as given:

(a) To each of the channels below there will be assigned one class I station and there may be assigned one or more class II stations operating limited time or daytime only: 640, 650, 660, 670, 700, 720, 750, 760, 770, 780, 820, 830, 840, 870, 880, 890, 1020, 1040, 1100, 1120, 1160, 1180, 1200, and 1210 kilocycles. The power of the Class I stations on these channels shall not be less than 50 kilowatts. [4 F. R. 2715-2716, 5 F. R. 3670, 6 F. R. 2554].

STANDARDS OF GOOD ENGINEERING PRACTICE CONCERNING STANDARD BROADCAST STATIONS (550-1600 KC).

(4 F. R. 2862).

* * * *

1. Engineering Standards of Allocation.

* * * * * *

(2) From an engineering point of view, Class I stations may be divided into two groups:

(a) The Class I stations in Group I are those assigned to the channels allocated by Section 3.25,

paragraph (a), on which duplicate nighttime operation is not permitted, that is, no other station is permitted to operate on a channel with a Class I station of this group within the limits of the United States (the Class II stations assigned the channels operate limited time or daytime only), and during daytime the Class I station is protected to the 100 uv/m ground wave contour. Protection is given this class of station to the 500 uv/m ground wave contour from adjacent channel stations for both day and nighttime operations.[1] The power of each Class I station shall not be less than 50 kw.

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[1] See Tables IV and V.

* * * *

Extracts from Table IV (4 F. R. 2865)—Protected service contours and permissible interference signals for broadcast stations.

Class of Station	Class of channel used	Permissible power	Signal intensity contour of area protected from objectionable interference [1]		Permissible interference signal on same channel [2]	
			Day [3]	Night	Day [3]	Night [4]
Ia	Clear	50 kw	SC 100 uv/m AC 500 uv/m	Not duplicated	5 uv/m	Not duplicated

[1] When it is shown that primary service is rendered by any of the above classes of stations, beyond the normally protected contour, and when primary service to approximately 90 percent of the population (population served with adequate signal) of the area between the normally protected contour and the contour to which such station actually serves, is not supplied by any other station or stations, the contour to which protection may be afforded in such cases will be determined from the individual merits of the case under consideration. When a station is already limited by interference from other stations to a contour of higher value than that normally protected for its class, this contour shall be the established standard for such station with respect to interference from all other stations.

[2] For adjacent channels see Table II.

[3] Groundwave.

[4] Skywave field intensity for 10 percent or more of the time.

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